

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Applications of)	
)	
ComScape Communications, Inc.)	
)	
For Renewal of License and Extension of Time to)	
Construct Broadband Personal Communications)	FCC File Nos.
Service Stations WPOJ722, Athens, OH and)	
WPOJ724, Zanesville-Cambridge, OH)	0003886129, 0003886133, 0003886165,
)	0003886172, 0004341633, 0004347077,
Request for Waiver of Section 24.203(a) of the)	0004650021, and 0004670252
Commission’s Rules)	
)	
For Lease of Broadband Personal)	
Communications Service Station WPOJ722,)	
Athens, OH)	
)	
For Assignment of Broadband Personal)	
Communications Service Station WPOJ722,)	
Athens, OH)	

ORDER

Adopted: June 23, 2011

Released: June 23, 2011

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we deny the construction extension and waiver requests, and dismiss the renewal applications filed by ComScape Communications, Inc. (ComScape), for Broadband PCS C Block Licenses WPOJ722, Athens, OH and WPOJ724, Zanesville-Cambridge, OH (Licenses).¹ We also dismiss ComScape’s application to assign WPOJ722 to New Cingular Wireless PCS, LLC (New

¹ FCC File Nos. 0003886129, 0003886133 (filed June 29, 2009, amended Mar. 15, 2010, Mar. 11, 2011 (WPOJ722), and Mar. 29, 2011 (WPOJ724)). Because they are largely identical, we refer to the initial waiver and extension requests collectively as “Waiver Requests” and the first amendments collectively as “Supplement to Waiver Requests.” Because the second amendments were specific to each license, however, we refer to each individually as “Athens Waiver Supplement” and “Zanesville Waiver Supplement.”

We note that ComScape Communications, Inc. Debtor-in-Possession (ComScape DIP) initially filed the applications. However, because the Bankruptcy Court dismissed ComScape’s filing for Chapter 11 bankruptcy on February 11, 2010 (Findings of Fact, Conclusions of Law, Memorandum Opinion and Order on Motion to Dismiss, Case No. 09-51045, United States Bankruptcy Court for the Southern District of Ohio, entered Feb. 11, 2010 (Bankruptcy Order)), and we accepted the involuntary assignment of the licenses from ComScape DIP to ComScape, *see* FCC File No 0004165902 (filed Mar. 12, 2010), our order today is directed to ComScape.

Cingular), an indirect wholly owned subsidiary of AT&T, Inc. (AT&T)² and ComScape's notification of a long term spectrum manager lease (Lease) for WPOJ722 between ComScape and New Cingular.³ As a result of our actions today, the Licenses terminated automatically on June 30, 2009.

II. BACKGROUND

2. On June 30, 1999, the Commission granted ComScape two Broadband PCS C Block licenses – WPOJ722, Athens, Ohio Basic Trading Area (BTA) 023 (Athens License) and WPOJ724, Zanesville-Cambridge, Ohio BTA 487 (Zanesville License).⁴ The Licenses had a first construction deadline of June 30, 2004 and a second construction deadline of June 30, 2009. ComScape timely filed construction notifications for the Licenses' first construction deadline, stating that prior to June 30, 2004, it covered 40.2% of the population of the Athens, Ohio BTA and 41.5% of the population of the Zanesville-Cambridge, Ohio BTA.⁵ One day prior to ComScape's second construction deadline, the licensee filed a request for waiver of the Commission's PCS construction rules and requested an extension of the second construction deadline until June 30, 2010.⁶ At the same time, ComScape filed for renewal of the Licenses.⁷

3. In the Waiver Requests, ComScape explains that in 2005, the relationship among the founding shareholders of its parent company, ComScape Holding, Inc. (CHI), had deteriorated to the point where litigation was initiated in state court in both Ohio, where CHI originally commenced its business operations, and in Florida, where the ComScape group of companies is currently headquartered.⁸ ComScape states that as a result of the "prolonged and contentious litigation," the ComScape companies experienced "financial difficulties" and ComScape decided to sell the Licenses "with the goal of monetizing the value of the assets and winding down the ComScape group of companies."⁹ To this end, ComScape states that during 2007 and 2008, it attempted to finalize the sale of the Licenses to Cleveland Unlimited, Inc. (Cleveland Unlimited). ComScape explains, however, that Cleveland Unlimited was unwilling to enter into a definitive agreement due to ComScape's internecine shareholder dispute.¹⁰

4. ComScape states that on February 6, 2009, it filed for Chapter 11 bankruptcy to enable the company to reorganize.¹¹ ComScape further states that on March 18, 2009, one of the founding

² See FCC File No. 0004341633 (filed Aug. 6, 2010).

³ See FCC File No. 0004347077 (filed Aug. 6, 2010).

⁴ In 2005, ComScape disaggregated 15 MHz of the Athens License and 10 MHz of the Zanesville License to New Par d/b/a Verizon Wireless. See FCC File No. 0002352099 (filed Oct. 27, 2005). Pursuant to section 24.714(e)(2) of the Commission's rules, ComScape retained responsibility for meeting the five- and ten-year construction requirements for the Licenses. *Id.*

⁵ FCC File Nos. 0001804970, 0001805016 (filed July 13, 2004).

⁶ FCC File Nos. 0003886129, 0003886133.

⁷ FCC File Nos. 0003886172, 0003886165 (filed June 29, 2009).

⁸ CHI is the corporate parent of 12 direct and indirect subsidiaries, including ComScape. Bankruptcy Order at Exhibit A. ComScape states that Ghanshyam C. Patel, then the sole director and officer of each of the ComScape companies, sued Jeremiah P. Byrne, among others, in Ohio state court to enjoin the defendants from interfering with Mr. Patel's operations of ComScape and its related companies. Waiver Requests at 2. ComScape further states that Mr. Byrne, on behalf of CHI, sued Mr. Patel in Florida state court for trespass in the ComScape offices after his alleged termination as President and CEO of the ComScape companies. *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 4.

shareholders of CHI, Bhogilal M. Modi, filed to dismiss the bankruptcy petition¹² and on February 12, 2010, the bankruptcy petition was dismissed.¹³ In light of the timing for resolution of the bankruptcy petition, ComScape requested that the Commission extend the second construction deadline until March 31, 2011.¹⁴

5. Subsequently, on August 6, 2010, ComScape filed a notice of a long term spectrum manager lease between ComScape and New Cingular, an indirect wholly owned subsidiary of AT&T, covering the Athens License.¹⁵ In the Lease Application, ComScape notes that the leased spectrum is also subject to a License Purchase Agreement between ComScape and New Cingular.¹⁶ ComScape states that it intends to lease the spectrum under the Athens License to New Cingular until the Commission approves the assignment of the license from ComScape to New Cingular.¹⁷ In the Assignment Application, ComScape notes that it is not serving any subscribers.¹⁸

6. On March 11, 2011, ComScape filed an additional supplement to the waiver request for the Athens License stating that as a result of the Lease with New Cingular, ComScape increased the coverage of the Athens BTA from 40.2% to 51.7%.¹⁹ Although ComScape's Athens BTA construction did not meet the two-thirds population coverage requirement in section 24.203(a) of the Commission's rules, ComScape maintains that it met the Commission's substantial service standard in light of the rural composition of the Athens BTA.²⁰ Specifically, ComScape states that three of the four counties that comprise the Athens BTA – Jackson, Meigs, and Vinton – meet the Commission's definition of a rural area.²¹ ComScape notes that while Athens County, with a population density of 122 people per square mile, does not meet the Commission's definition of a rural area, the county has a high poverty level of 29.6%.²² Regarding WPOJ722, ComScape asks that we grant an extension of the construction requirement until March 31, 2011, and find that it provides substantial service sufficient to meet its second construction requirement.²³

7. Regarding the Zanesville License, on March 29, 2011, ComScape filed an additional supplement requesting a further extension of the second construction deadline until March 30, 2012.²⁴ In

¹² *Id.*

¹³ Supplement to Waiver Requests at 1.

¹⁴ *Id.* at 3.

¹⁵ FCC File No. 0004347077 (filed Aug. 6, 2010) (Lease Application).

¹⁶ Lease Application at 1.

¹⁷ *Id.* at 1. *See also* FCC File No. 0004341633 (filed Aug. 6, 2010) (Assignment Application).

¹⁸ Assignment Application at 1.

¹⁹ Athens Waiver Supplement at 2.

²⁰ *Id.* at 1.

²¹ *Id.* at 2. The Commission's baseline definition of "rural area" is a county with a population density of 100 persons per square mile or less. *See* Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services, *Report and Order*, 19 FCC Rcd 19078, 19087-19088, ¶ 11 (2004). According to 2000 Census data, Jackson County has an average of 77 people per square mile, Meigs County has an average of 53 people per square mile and Vinton County has an average of 31 people per square mile. *Id.*

²² *Id.*

²³ *Id.* at 1.

²⁴ Zanesville Waiver Supplement at 2.

support of its request, ComScape repeats that it was in a “paralytic situation” until the bankruptcy litigation was dismissed on February 12, 2010.²⁵ ComScape states that it needs an additional year to develop a plan for completion of the second construction requirement.²⁶

III. DISCUSSION

8. Section 24.203(a) of the Commission’s rules requires Broadband PCS licensees to meet construction requirements by operating facilities that transmit with a signal level sufficient to provide adequate service to at least one-third of the population in their licensed area within five years of being licensed and two-thirds of the population in their licensed area within ten years of being licensed.²⁷ Licensees may, in the alternative, provide substantial service to their licensed area within the appropriate five- and ten-year benchmarks.²⁸ Unless an extension or waiver is granted, the failure to meet the Commission’s construction requirements results in the automatic termination of the license.²⁹

9. Under section 1.946(e) of the Commission’s rules, an extension of time to complete construction may be granted if the licensee shows that the failure to complete construction is due to causes beyond its control.³⁰ Section 1.946 also lists specific circumstances where extension requests will not be granted, including delays caused by a failure to obtain financing, because the license undergoes a transfer of control, or because the licensee intends to assign the authorization.³¹ In addition, pursuant to section 1.925 of the Commission’s rules, a waiver may be granted if the petitioner establishes either that: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that grant of the waiver would be in the public interest; or (2) where the petitioner establishes unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.³²

10. ComScape argues that an extension is warranted because its failure to meet the second construction deadline was due to circumstances beyond the company’s control.³³ ComScape states that the intra-company litigation resulted in company paralysis which, in turn, led to the company’s deteriorating financial condition.³⁴ In addition, ComScape maintains that until the Bankruptcy Court dismissed its bankruptcy petition and resolved the question of ComScape’s management, ComScape could not proceed to develop a plan for completing the second construction requirement.³⁵ Further, ComScape states that the internecine litigation prevented the company from completing a sale of the Licenses in sufficient time for a buyer to timely meet the second construction deadline.³⁶ Thus, as a result

²⁵ *Id.* at 3.

²⁶ *Id.*

²⁷ 47 C.F.R. § 24.203(a).

²⁸ *Id.*

²⁹ *See* 47 C.F.R. §§ 1.946(c), 1.955(a)(2).

³⁰ *See* 47 C.F.R. § 1.946(e).

³¹ *See id.* at § 1.946(e)(2)-(3).

³² 47 C.F.R. § 1.925. Alternatively, pursuant to section 1.3, the Commission has authority to waive its rules if there is “good cause” to do so. 47 C.F.R. § 1.3. *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

³³ Waiver Requests at 5-6; Supplement to Waiver Requests at 2.

³⁴ Waiver Requests at 5-6.

³⁵ Supplement to Waiver Requests at 2-3.

³⁶ Waiver Requests at 5.

of the internecine litigation, ComScape maintains its inability to meet the second construction deadline was due to circumstances beyond its control.³⁷

11. In addition, ComScape argues that it qualifies for a waiver under either prong of the Commission's waiver standard. Specifically, ComScape argues that the underlying purpose of the construction rule is to ensure deployment of service to the public on a timely basis.³⁸ Further, ComScape argues that absent the intra-company litigation, the company could have sold the Licenses with sufficient time to permit a buyer to meet the second construction deadline.³⁹ ComScape maintains that an extension is warranted to permit the sale and additional construction of the Licenses and that the underlying purpose of the rule would be frustrated without grant of an extension.⁴⁰ ComScape also argues that application of the PCS construction requirements would be inequitable because the unique circumstance of the internecine litigation paralyzed the company and prevented additional construction or timely sale of the Licenses.⁴¹

12. Based on the record before us, we find that an extension of time to construct or waiver of the construction requirements for the Licenses is not warranted. Ultimately, ComScape proffers a single reason for its failure to meet the Licenses' second construction requirement – the internecine litigation between the company's shareholders.⁴² We reject the suggestion that internal corporate litigation justifies extension of a construction requirement.⁴³ ComScape's inability to find agreement within itself and subsequent litigation to determine corporate control is not a circumstance beyond the licensee's control, rather it is a matter wholly within the licensee's purview. We also reject the suggestion that entering into voluntary bankruptcy warrants an extension of the second construction deadline. The Commission previously explained that "the decision to go into voluntary bankruptcy is by definition within the control of the licensee, and waiving a [construction] milestone on this basis could create an incentive for licensees to declare Chapter 11 bankruptcy merely to delay implementation of its . . . system."⁴⁴ We find that the internecine litigation as well as the subsequent petition for voluntary bankruptcy were both circumstances well within ComScape's control and thus insufficient grounds for grant of an extension.

13. Moreover, section 1.946(e)(3) explicitly precludes extensions of construction deadlines "because the licensee intends to assign the authorization."⁴⁵ Here, ComScape repeatedly states its intention to assign the Licenses if an extension is granted.⁴⁶ Consistent with this intent, over 13 months after the second construction deadline passed, ComScape filed an application to assign the Athens

³⁷ *Id.* at 6.

³⁸ *Id.*

³⁹ *Id.* at 7.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at 5-8; Supplement to Waiver Requests at 1-2; Zanesville Supplement at 1-2.

⁴³ See R/L DBS Company, LLC For Extension of its Direct Broadcast Satellite Construction Permit, *Memorandum Opinion and Order*, 16 FCC Rcd 9, 18 n.42 (Int'l Bur. 2000) ("*R/L DBS Order*") (rejecting internal corporate litigation as a justification for extension of a construction permit deadline).

⁴⁴ Emergency Application for Review and Request for Stay of Globalstar, L.P., *Memorandum Opinion and Order*, 19 FCC Rcd 11548, 11560-61 ¶¶ 28-29 (2004) ("*Globalstar Order*").

⁴⁵ 47 C.F.R. § 1.946(e)(3).

⁴⁶ When it filed the Waiver Requests, ComScape stated that if the Bankruptcy Court denied the motion to dismiss, "a buyer will come forward, and the funds for the required build-out will become available." Waiver Requests at 6, 7 ("one-year extension . . . will permit the sale process to proceed").

License to New Cingular.⁴⁷ ComScape has not proffered a plan to sell or further construct the Zanesville License. It is well settled Commission precedent that extensions of construction deadlines will not be granted to enable licensees to identify prospective buyers.⁴⁸ We see no basis to depart from that precedent here. We also note that section 1.946(e)(2) specifically states that extensions will not be granted for a licensee's failure to obtain financing.⁴⁹ Thus, ComScape's claims of financial deterioration due to shareholder in-fighting are also insufficient to support its extension request.

14. We also find that ComScape failed to meet either prong of our waiver standard. Regarding the first prong of the waiver standard, the underlying purpose of our construction rules is to ensure the efficient and effective use of the radio spectrum.⁵⁰ The Commission adopts performance requirements "to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services."⁵¹ Here, although Comscape satisfied its initial construction requirement, it has no comprehensive plan for meeting its second construction deadline. Instead, 19 months after the construction deadline, ComScape states that new management needs an additional year, until March 30, 2012, to "develop a plan for completion of the second build-out requirement" for WPOJ724.⁵² Regarding WPOJ722, ComScape states that pursuant to a long-term spectrum manager lease with New Cingular, it completed additional construction of the license to increase coverage by 11.5% from 40.2% to 51.7% -- also 19 months after the construction deadline.⁵³ ComScape's substantial delay in constructing the Licenses is inconsistent with the underlying purpose of our construction rules and thus does not support a waiver of our rules.

15. Likewise, ComScape fails to meet the second prong of the waiver standard. We find that the circumstances in this instance are not sufficiently "unique and unusual" to warrant relief from the applicable construction requirements⁵⁴ or that the denial of an extension would be inequitable. We also reject ComScape's argument that the public interest supports grant of the requested waiver,⁵⁵ particularly where ComScape does not serve existing customers,⁵⁶ has not provided a substantive plan for meaningful service to the public,⁵⁷ and our research reflects that the market is already served by multiple providers.⁵⁸

⁴⁷ See FCC File No. 0004341633.

⁴⁸ See 47 C.F.R. § 1.946(e)(3); Thomas A. Seaman, Receiver for Vitech Corporation, *Order*, 22 FCC Rcd 1916, 1918 ¶ 6 (WTB/Mobility Div. 2007) ("Seaman Order").

⁴⁹ See 47 C.F.R. § 1.946(e)(2).

⁵⁰ The Commission adopts construction requirements for services in part to fulfill its obligations under section 309(j) of the Communications Act of 1934, as amended, which requires the Commission to include "safeguards to protect the public interest in the use of the spectrum." 47 U.S.C. § 309(j)(3).

⁵¹ 47 U.S.C. § 309(j)(4)(B).

⁵² Zanesville Waiver Supplement at 3 (emphasis added).

⁵³ Athens Waiver Supplement at 2.

⁵⁴ See e.g., *R/L DBS Order*, 16 FCC Rcd at 18 n.42 (rejecting internal corporate litigation as a justification for extension of a construction permit deadline); see also *Globalstar Order*, 19 FCC Rcd at 11560-61 ¶¶ 28-29 (entering into voluntary bankruptcy did not warrant construction milestone extension).

⁵⁵ See Waiver Requests at 7-8.

⁵⁶ Assignment Application at 1.

⁵⁷ See *Seaman Order*, 22 FCC Rcd at 1919 ¶ 7.

⁵⁸ There are five wireless providers in the Athens BTA (AT&T, Ntelos, Sprint Nextel, T-Mobile, and Verizon Wireless) and six wireless providers in the Zanesville BTA (AT&T, Cleveland Unlimited, Allied Wireless, Sprint Nextel, T-Mobile, and Verizon Wireless). FCC analysis based on American Roamer database, January 2011.

While our grant of a waiver would serve ComScape's financial interest, such a grant is not in the public interest.

16. In addition, we reject ComScape's contention that this case is analogous to *Pacific Communications*.⁵⁹ In *Pacific Communications*, the Mobility Division (MD) of the Wireless Telecommunications Bureau (WTB) granted a nine-month extension of the broadband PCS construction deadline to Pacific Communications based on factors that are not present in this case. In *Pacific Communications*, the MD found that protracted litigation over most of the license term, leaving only six months to complete construction, was beyond the licensee's control.⁶⁰ The litigation involved in *Pacific Communications*, however, was between unaffiliated entities, and thus truly beyond the licensee's control, unlike the internecine litigation at issue here.

17. Further, in *Pacific Communications*, the MD found that the public interest would not be served by strictly enforcing the construction deadline, because the licensee planned to build a state-of-the-art system that would enable the licensee to effectively compete with the mature, entrenched systems in the market.⁶¹ Thus, the MD found that the brief waiver would increase competition in the market to the benefit of consumers.⁶² In the instant case, however, ComScape did not provide any plan to meet the second construction requirement for the Zanesville BTA and ComScape did not attempt to meet the second construction deadline for the Athens BTA until 19 months after it had passed.⁶³ We also note that ComScape's intended assignment of the Athens License to New Cingular will not increase competition as New Cingular is a wholly owned subsidiary of AT&T, which already provides service in the market.⁶⁴ Further, there is no evidence in this record that AT&T faces a spectrum shortage in the market.⁶⁵ Accordingly, we do not find that a waiver or extension is warranted in this case.

18. Similarly, we find ComScape's reliance on *Magnacom Wireless* is also misplaced. ComScape argues that consistent with *Magnacom Wireless*, an extension of the construction deadline is warranted to permit a licensee in bankruptcy to transfer the licenses during the bankruptcy proceeding.⁶⁶ We disagree. In *Magnacom Wireless*, WTB's Commercial Wireless Division (CWD) granted a limited waiver of the broadband PCS construction requirement due to the unique circumstances involved and the benefits to the public interest.⁶⁷ Specifically, the CWD found that the licensee proposed to serve small

⁵⁹ *Pacific Communications and Coral Wireless, LLC, Memorandum Opinion and Order*, 19 FCC Rcd 15574, 15577 ¶ 9 (WTB/Mobility Division 2004) (*Pacific Communications*).

⁶⁰ *Id.* at 15576 ¶ 6.

⁶¹ *Id.* at 15577 ¶ 9. Also important to the Commission's determination was the licensee's statement that if the Commission denied the extension, it would meet the deadline by building a "bare bones" system. *Id.* at 15575-76 ¶ 6.

⁶² *Id.* at 15577 ¶ 8.

⁶³ Because we deny the Waiver Requests, the licenses automatically terminated as of the construction deadline. Accordingly, we do not address the sufficiency of ComScape's demonstration of substantial service for WPOJ722 under our rules.

⁶⁴ *See supra* n. 58.

⁶⁵ ComScape states that if the Athens License is assigned to AT&T, AT&T will hold 67 MHz of spectrum in the Athens BTA. Assignment Application at 3.

⁶⁶ Waiver Requests at 8.

⁶⁷ Trustee in Bankruptcy For Magnacom Wireless, LL and Telecommunications Wrap Up Group LLC; Petition for Waiver and Extension of Broadband PCS Construction Requirements, *Order*, 17 FCC Rcd 9535 (WTB/Commercial Wireless Division 2002) ("*Magnacom Wireless*").

towns and rural areas not readily served by other wireless carriers as well as tribal lands.⁶⁸ In addition, the CWD found that the licensee had engaged in diligent efforts to acquire and construct the licenses for over two and a half years.⁶⁹ Here, although the Licenses cover small towns and rural areas, ComScape failed to demonstrate how it intends to meet the second construction deadline for the Zanesville License and untimely proffered an attempt to meet the second construction deadline for the Athens License. The internecine litigation does not excuse ComScape's lack of diligence in construction of the Licenses and thus a waiver or extension is not warranted.

19. Accordingly, because we deny ComScape's waiver and extension requests, the licenses for the above-captioned stations automatically terminated as of the license expiration date. As a result, there are no valid licenses to renew, and the renewal applications are dismissed as moot. In addition, there are no valid licenses to lease or assign and those applications are dismissed as moot as well.

IV. ORDERING CLAUSE

20. Accordingly, IT IS ORDERED, pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and sections 0.131, 0.331, 1.925, 1.946(e), 1.955(a)(2) and 24.203(a) of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.925, 1.946(e), 1.955(a)(2), 24.203(a), that the requests for waiver or extension of the construction requirements for PCS Broadband Service licenses WPOJ722 and WPOJ724 filed by ComScape Communications, Inc. on June 29, 2009, and amended on March 15, 2010, March 11, 2011, and March 29, 2011, ARE HEREBY DENIED.

21. IT IS FURTHER ORDERED, pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and sections 0.131, 0.331, 1.948, 1.949, and 1.9020 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.948, 1.949, and 1.9020, that the above-captioned applications for renewal of license, notification of spectrum leasing arrangement, and assignment of license, ARE HEREBY DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

Thomas P. Derenge
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

⁶⁸ *Id.* at 9537-38 ¶¶ 6-7.

⁶⁹ *Id.* at 9538 ¶ 8.